

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MAKETA S. JOLLY,

Plaintiff,

v.

1:19-CV-1317
(DNH/TWD)

EXCELSIOR COLLEGE,

Defendant.

APPEARANCES:

MAKETA S. JOLLY
Plaintiff, *pro se*
42 Kingston Terrace
Aston, Pennsylvania 19014

THÉRÈSE WILEY DANCKS, United States Magistrate Judge

ORDER

Maketa S. Jolly (“Plaintiff”) originally filed her complaint and application to proceed *in forma pauperis* on May 21, 2019, in the United States District Court for the Eastern District of Pennsylvania. (Dkt. No. 1.) The Honorable Joel H. Slomsky, United States District Judge, granted Plaintiff leave to proceed *in forma pauperis* and considered whether her complaint satisfied 28 U.S.C. § 1915(e)’s sufficiency standards. (Dkt. No. 4.) To that end, Judge Slomsky dismissed Plaintiff’s claims against the State of Vermont, the State of New Jersey, the Vermont Board of Nursing, the New Jersey Board of Nursing, Phyliss Mitchell and Joanne Leone with prejudice. (Dkt. No. 5.) He further dismissed Plaintiff’s claims for injunctive and declaratory relief against those defendants without prejudice to replead “in a court where venue is appropriate.” *Id.* The Court did, however, find Plaintiff’s claims against Excelsior College

survived initial review and required a response. *Id.* This case was thereafter transferred to the Northern District of New York pursuant to 28 U.S.C. § 1406(a). *Id.*

After the case was transferred, Plaintiff was given an opportunity to file an amended complaint, “which must be a complete pleading, to reassert injunctive and declaratory relief against the remaining defendant.” (Dkt. No. 11.) On November 7, 2019, Plaintiff filed what was docketed as an “Amended Complaint” but what is internally labeled as a “MOTION FOR DECLARATORY JUDGMENT AND MEMORANDUM IN SUPPORT THEREOF.” (Dkt. No. 13.) Notably, this filing does not restate her other claims against Excelsior College but rather appears to be a stand-alone motion seeking relief. However, any such motion is premature given that the complaint has not been served.

Given the circumstances, the so-called “Amended Complaint” will be stricken from the record and the Court will consider the original complaint (Dkt. No. 1) as the operative pleading and order service.

WHEREFORE, it is hereby

ORDERED that Plaintiff’s “Amended Complaint” (Dkt. No. 13) be stricken from the record; and it is further


ORDERED that the Clerk shall issue a summons and forward it, along with a copy of the complaint and a packet containing General Order 25, which sets forth the Civil Case Management Plan used by the Northern District of New York, to the United States Marshal for service upon Excelsior College; and it is further

ORDERED that a formal response to Plaintiff’s complaint be filed by Defendant as provided for in the Federal Rules of Civil Procedure subsequent to service of process on Defendant; and it is further

ORDERED that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a true and correct copy of same was served on all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a proper certificate of service will be stricken from the docket.** Plaintiff must comply with all requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; his failure to do so will result in the dismissal of this action;** and it is further

ORDERED that the Clerk serve a copy of this Order and General Order 25 on Plaintiff.

Dated: February 11, 2019
Syracuse, New York


Therese Wiley Dancks
United States Magistrate Judge